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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,396	04/10/2001	James Cahill	1968.1-1C	8541

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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/832,396

Applicant(s)

CAHILL, JAMES

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-13, 16, 21, 22, 24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-9, 11-13, 16, 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 10, 24, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tinkey (US 3217955).

Tinkey (figures 1, 2) teaches tether structure wherein the tether is tape 24 that is inherently subdividable, that is separates, to form subtethers through the fact that it can be cut into pieces of different configuration. The tape can inherently separate via a slit down the middle of the longitudinal extent of the tape so as to form two subtethers connected to the dispenser. The tether through being adhesive has a fastener in the form of adhesive at an end. The dispenser 10 has slots 14 that inherently make the dispenser attachable to a container and the tether in the form of adhesive tape is extractable from the dispenser. Applicant is reminded that if the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tinkey (US 3217955) in view of Sinsko (US 4532972).

Tinkey (figures 1, 2) teaches tether structure wherein the tether is tape 24 that is inherently subdividable, that is separates, to form subtethers through the fact that it can be cut into pieces of different configuration. The tape can inherently separate via a slit down the middle of the longitudinal extent of the tape so as to form two subtethers connected to the dispenser. The tether through being adhesive has a fastener in the form of adhesive at an end. The dispenser 10 has slots 14 that inherently make the dispenser attachable to a container and the tether in the form of adhesive tape is extractable from the dispenser. The difference is it lacks a badge for indicia. However, Sinsko (figure 1) teaches that to readily locate items tethered 23 within a purse and to find them rapidly (Abstract) that it is desirable to secure the tethered object to an anchored plate with the object identified by indicia. It would have been obvious to modify the extractable tether of Tinkey such that indicia is carried on a badge on the casing to identify the tethered item in view of Sinsko teaching that to readily locate items tethered 23 within a purse and to find them rapidly (Abstract), it is desirable to secure the tethered object to an anchored plate with the object identified by indicia.

### ***Response to Arguments***

Applicant's arguments filed May 27, 2005 have been fully considered but they are not persuasive. Applicant argues :

Claim 10 has been amended to require that any subtether remain connected to the dispenser. This change is supported by Fig. 4. This requirement avoids the lack of novelty rejection based on Tinkey (US 3217955) which describes a sticky tape dispenser in which the tape portion (subtether) is disconnected from the dispenser.

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This argument is unpersuasive because the tape of the device of Tinkey (US 3217955) can be extracted from the dispenser and then adhesively attached to an item. The tape of the device of Tinkey can obviously remain extracted from yet connected to the dispenser. Further since the tape of Tinkey is severable it inherently separates into two subtethers when slit in the lengthwise direction and still remains connected to the dispenser. Applicant refers to figure 4 of this application for support for the amended subject matter. It is also pertinent to note that the "subtethers" are joined together when in the dispenser and this being joined together is the principle relied upon in the application of Tinkey. While applicant has a line of weakness to join the subtethers together, applicant does not claim the line of weakness and the separation is fully met by the tape of Tinkey by subtethers inherently being capable of being created by slitting the tape. The device of Tinkey is capable of performing the intended use.

*Allowable Subject Matter*

Claims 3-9, 11-13, 16, 21 and 22 are allowed.

Claims 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after


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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB